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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ERIC STEPHEN FREEZE,

11 Plaintiff,

12 v.

13 DON MCDERMOTT, et al.,

14 Defendants.

CASE NO. C22-1844JLR

ORDER

15 **I. INTRODUCTION**

16 On July 13, 2023, the court ordered *pro se* Plaintiff Eric Stephen Freeze to show
17 cause, by July 27, 2023, why the court should not conclude that Mr. Freeze fails to state a
18 plausible claim against Mr. Acuna and dismiss this action. (7/13/23 Order (Dkt. # 53) at
19 10.) Mr. Freeze timely responded to the court's order to show cause. (*See generally*
20 Resp. (Dkt. # 63).) In his response, Mr. Freeze also asks the court to grant him leave to
21 amend his complaint. (*See id.*) The court has considered Mr. Freeze's response, the
22 relevant portions of the record, and the governing law. Being fully advised, the court

DISMISSES Mr. Freeze’s amended complaint (Am. Compl. (Dkt. # 3)), DENIES Mr. Freeze’s motion for leave to amend (Resp.), and DENIES as moot Defendant Jose T. Acuna’s pending motion to dismiss (Acuna MTD (Dkt. # 51)).

II. BACKGROUND¹

Mr. Freeze’s claims in this matter arise from his eviction from a property in Concrete, Washington (the “Property”) and the Skagit County Superior Court quiet title action that preceded it. (*See generally* Am. Compl.) On December 29, 2022, Mr. Freeze filed this lawsuit against various Defendants, alleging a litany of violations of state and federal statutes and provisions of the Washington State and United States Constitutions. (*See* Am. Compl. at 12-19; *see generally* Compl. (Dkt. # 1); 5/23/23 Order at 2-8 (discussing the parties and their connections to the case).) On May 23, 2023, the court dismissed Mr. Freeze’s claims against all Defendants except Mr. Acuna, who had not yet appeared in the action. (*See* 5/23/23 Order; Dkt.) Mr. Freeze alleges that Mr. Acuna, a tenant of the Property who had negotiated to buy it, violated his First and Fourth Amendment rights. (*See* Am. Compl. at 5-6, 13-14.)

In its July 13, 2023 show cause order, the court construed Mr. Freeze’s claim against Mr. Acuna for alleged violations of his First and Fourth Amendment rights (*id.* at 13-14) as a constitutional claim brought under 42 U.S.C. § 1983. (*See* 7/13/23 Order at 4-5.) The court went on to preliminarily conclude that Mr. Freeze failed to establish that Mr. Acuna, a private individual, acted under color of state law when he allegedly violated

¹ The court detailed the factual and procedural background of this case in its May 23, 2023 order (5/23/23 Order (Dkt. # 27) at 4-8) and does not repeat that background here.

1 Mr. Freeze’s constitutional rights, and thus, failed to state a plausible Section 1983 claim
2 against Mr. Acuna. (*See id.* at 5-10 & n.3 (concluding that Mr. Freeze also failed to
3 identify a plausible violation of his First and Fourth Amendment rights).) The court also
4 preliminarily concluded that, to the extent the allegations in Mr. Freeze’s amended
5 complaint could be construed as alleging a conspiracy claim against Mr. Acuna under 42
6 U.S.C. § 1985(3) (Am. Compl. at 13-14), such a claim would fail because: (1) “the court
7 cannot reasonably infer the existence of an agreement to violate Mr. Freeze’s
8 constitutional rights”; (2) “the absence of a [S]ection 1983 deprivation of rights precludes
9 a [S]ection 1985 conspiracy claim predicated on the same allegations”; and (3) “Mr.
10 Freeze does not allege any class-based discrimination.” (7/13/23 Order at 9-10 (quoting
11 *Caldeira v. Cnty. of Kauai*, 866 F.2d 1175, 1182 (9th Cir. 1989)); *id.* at 10 n.4 (citing
12 cases that discuss the class-based animus requirement).)

13 A trial court may dismiss a claim *sua sponte* under Federal Rule of Civil
14 Procedure 12(b)(6). *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987)
15 (citing *Wong v. Bell*, 642 F.2d 359, 361-62 (9th Cir. 1981)). Unless it is apparent that the
16 plaintiff “cannot possibly win relief,” *sua sponte* dismissal is appropriate only after
17 providing the parties an opportunity to be heard. *Wong*, 642 F.2d at 361-62; *Sparling v.*
18 *Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988). The court, exercising this
19 authority, ordered Mr. Freeze to show cause why the court should not conclude that Mr.
20 Freeze fails to state a plausible claim against Mr. Acuna and dismiss this action. (7/13/23
21 Order at 10.) Mr. Freeze timely responded. (Resp.)

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III. ANALYSIS

Mr. Freeze's response to the court's show cause order does not substantively respond to the issues identified in that order. (*See generally* Resp.) Rather, his response focuses almost entirely on the alleged misconduct of parties and individuals who are no longer before the court. (*See generally id.*; *see also* 5/23/23 Order (dismissing the Skagit County Defendants and the Trust Defendants); 7/18/23 Order (Dkt. # 60) at 2 (reiterating that "[Erik] Pedersen is no longer involved in this action because his clients, the Skagit [County] Defendants, have been dismissed from this case").) With respect to Mr. Acuna, Mr. Freeze's response merely repeats the allegations in his amended complaint regarding Mr. Acuna's alleged involvement in a scheme to take away Mr. Freeze's Property in violation of his Fourth Amendment rights. (*Compare* Resp. at 13, *with* Am. Compl. at 5-6, 13-14.)

In light of the analysis and preliminary conclusions set forth in the court's show cause order (*see* 7/13/23 Order at 4-10), and Mr. Freeze's failure to meaningfully respond to the same (*see generally* Resp.), the court concludes that Mr. Freeze's amended complaint fails to state plausible claims for relief against Mr. Acuna under Sections 1983 and 1985(3). The court therefore DISMISSES Mr. Freeze's claims against Mr. Acuna under Sections 1983 and 1985(3).

To the extent Mr. Freeze's amended complaint asserts other claims against Mr. Acuna, the court also dismisses these for failure to allege any plausible claim for relief. In addition to the claims identified above, Mr. Freeze's amended complaint also asserts claims for equitable estoppel and for violations of numerous federal and state criminal

1 statutes against “Defendants” generally. (*See* Am. Compl. at 12-13, 18; *compare id.*,
 2 *with id.* at 13-19 (alleging certain claims against only the elected, state actor Skagit
 3 County Defendants).) To the extent Mr. Freeze intended to assert these claims against
 4 Mr. Acuna, he cannot possibly recover against Mr. Acuna under any of these claims.
 5 First, no private right of action exists to enforce the criminal statutes Mr. Freeze cites.
 6 (*See* Am. Compl. at 13-18); *see, e.g., Keyter v. 230 Gov’t Officers*, 372 F. Supp. 2d 604,
 7 610 (W.D. Wash. 2005) (“Private citizens are not permitted to enforce criminal statutes
 8 or prosecute crime.”), *aff’d sub nom. Keyter v. Locke*, 182 F. App’x. 684 (9th Cir. 2006);
 9 *Silviera v. Bank of Am., N.A.*, No. CV 17-00185 DKW-KJM, 2017 WL 1532264, at *2-3
 10 & n.5 (D. Haw. Apr. 27, 2017) (reaching the same conclusion regarding 18 U.S.C.
 11 §§ 241 and 242, two of the criminal statutes at issue here); *Kerner v. Seattle Police Dep’t*,
 12 C18-1737JCC, 2019 WL 1922925, at *3 (W.D. Wash. Apr. 30, 2019) (“Plaintiff cannot
 13 maintain private causes of action under Revised Code of Washington §§ 9A.80.010,
 14 42.20.040, 42.20.100, 9A.36.080, 9A.36.011.”). Second, Mr. Freeze cannot state a
 15 cognizable claim for equitable estoppel against Mr. Acuna (*see* Am. Compl. at 12)
 16 because “[e]quitable estoppel is available only as a defense to claims against enforcement
 17 of a contract,” *McCormick v. Lake Wash. Sch. Dist.*, 992 P.2d 511, 516 (Wash. Ct. App.
 18 1999), and Mr. Freeze does not allege the existence of a contract between himself and
 19 Mr. Acuna (*see* Am. Compl.).² Accordingly, the court DISMISSES each of Mr. Freeze’s
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21 ² To the extent Mr. Freeze attempts to base an equitable estoppel claim on Mr. Acuna’s
 22 alleged failure to respond to Mr. Freeze’s “affidavits” (Am. Compl. at 12-13), the court has
 already concluded that “[a]bsent some duty or contractual obligation to respond, Defendants’

1 remaining claims against Mr. Acuna, if any. The court need not give Mr. Freeze notice
 2 and an opportunity to be heard before dismissing such claims because he “cannot
 3 possibly win relief.” *Wong*, 642 F.2d at 361-62; *see also Shoop v. Deutsche Bank Nat.*
 4 *Tr. Co.*, 465 F. App’x 646, 647 (9th Cir. 2012) (affirming district court’s Rule 12(b)(6)
 5 *sua sponte* dismissal of plaintiffs’ Truth in Lending Act claims as time-barred, “despite
 6 not providing [plaintiffs’] notice and an opportunity to oppose dismissal”).

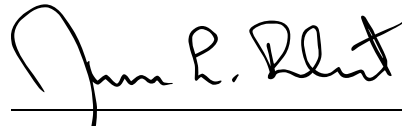
7 In general, a district court must provide a *pro se* litigant with notice of the
 8 deficiencies of the complaint and an opportunity to amend if those deficiencies can be
 9 cured. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992); *Akhtar v. Mesa*, 698 F.3d
 10 1202, 1212 (9th Cir. 2012). The court may, however, deny leave to amend where
 11 amendment would be futile. *Flowers v. First Hawaiian Bank*, 295 F.3d 966, 976 (9th
 12 Cir. 2002) (citing *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d
 13 242, 247 (9th Cir. 1990)). Here, Mr. Freeze’s constitutional claims against Mr. Acuna
 14 are premised on Mr. Acuna’s alleged interference with Mr. Freeze’s interest in the
 15 Property. (*See* 7/13/23 Order at 7-10; Am. Compl. at 5-6, 13-14.) The court concludes
 16 that amendment would be futile because: (1) the Skagit County Superior Court
 17 conclusively ruled that Mr. Freeze had no legal or equitable right to the Property that is
 18 the subject of this action (*see* 5/23/23 Order at 7, 14 (citing SCD MTD (Dkt. # 10), Ex.
 19 6)); (2) Mr. Freeze has failed to identify anything that would plausibly indicate Mr.
 20 Acuna is a state actor capable of being sued under Section 1983 or that he violated or
 21 _____
 22 failure to respond to Mr. Freeze’s Affidavits does not create a cognizable claim.” (*See* 5/23/23
 Order at 12-13.)

1 conspired to violate Mr. Freeze's constitutional rights; and (3) Mr. Freeze "cannot
2 possibly win relief" with respect to his claims for equitable estoppel and violations of
3 state and federal criminal statutes. (*See supra*; 7/13/23 Order at 4-10.) Accordingly, the
4 court DENIES Mr. Freeze's motion for leave to amend and DISMISSES Mr. Freeze's
5 claims against Mr. Acuna with prejudice and without leave to amend.

6 IV. CONCLUSION

7 For the foregoing reasons, the court DISMISSES Mr. Freeze's amended complaint
8 (Dkt. # 3) with prejudice and without leave to amend and DIRECTS the Clerk to close
9 this case. The court further DENIES Mr. Freeze's motion for leave to amend (Dkt. # 63)
10 and DENIES as moot Mr. Acuna's motion to dismiss (Dkt. # 51).

11 Dated this 28th day of July, 2023.

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14 JAMES L. ROBART
15 United States District Judge
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